

Applh. No. 09/661,509
Amdt. dated April 11, 2005
Preliminary Amendment

REMARKS

Claims 10-20 present appear in this case. No claims have yet been examined on the merits. By the Examiner Interview Summary form (Paper No. 9) attached to the Notice of Abandonment of July 24, 2002, the examiner stated that the restriction requirement of March 25, 2002, had been rescinded. Accordingly, applicant's amendment of April 25, 2002, was not an amendment in accordance with 37 C.F.R. §1.111(b), and the present amendment is still a preliminary amendment, as opposed to a supplementary amendment under 37 C.F.R. §1.111(a)(2). Accordingly, the present amendment should be entered as a matter of right.

The present application was filed on September 13, 2000. The first page of the Utility Patent Application transmittal form stated that the specification had 54 pages, including the Abstract of the Disclosure. Twenty-two sheets of drawings were attached, along with a copy of the Declaration from the parent application.

Paragraph 5 of the transmittal form stated:

Incorporation by reference (*usable if Box 4b is checked*)

The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

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Also, attached to the application filed on September 13, 2000, was a preliminary amendment adding additional disclosure to the specification. This preliminary amendment included the addition of a new first paragraph of the specification, stating that the parent and grandparent applications were incorporated by reference.

On November 6, 2000, a Notice of Incomplete Non-Provisional Application was mailed, stating that a filing date could not be accorded because the specification did not include at least one claim. On November 20, 2000, applicant filed a petition arguing that the continuation-in-part application was entitled to be accorded the filing date of September 13, 2000, as it included the claims set forth in the preliminary amendment filed on September 13, 2000. By petition decision of May 25, 2001, the petition was granted and the filing date of September 13, 2000, was accorded the case with claims 1, 31 and 32, filed on September 13, 2000, in the preliminary amendment, being considered to be the sole claims in the case and subject to renumbering as claims 1-3 by the examiner in due course.

The decision of May 25, 2001, stated:

The Office notes that applicant's transmittal indicated that the above-identified application consisted of 54 page specification. However, only 24 pages of specification and one unnumbered page of abstract have been located in the file.

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Nevertheless, the papers are sufficient to accord the application a filing date of September 13, 2000.

The present application was intended to have been filed with all 54 pages of the specification of parent application 09/480,812, including pages 1-47 of specification, pages 48-53 of claims (claims 1-26), and one unnumbered sheet of Abstract; hence, the 54 pages noted in the transmittal form submitted with the present application. Furthermore, the 12 sheets of drawings (Figs. 1-13) from the parent case were submitted, along with 10 additional sheets of drawings (Figs. 14-23) that were intended to be added to the continuation in part application. The preliminary amendment submitted on September 13, 2000, added disclosure to the specification referring to new figures 14-23, adding a new Example 14, and otherwise adding further disclosure to the parent application so as to create the continuation-in-part. Attached hereto as Appendix B are pages 48-53 of the parent application, which are claims 1-26. It is not requested that these pages be added to the present application at the present time.

It is apparent that pages 25-47 of the application, intended to have been filed on September 13, 2000, were either separated and lost by the Patent and Trademark Office after filing or were not submitted due to do some error in the office of the attorney who filed the application. As the

postcard receipt does not enumerate the number of pages submitted, it is not helpful in resolving this question. However, in view of the fact that the entire parent application has been incorporated by reference into the present application, both by means of the paragraph 5 of the transmittal letter quoted above, as well as the preliminary amendment filed on September 13, 2000, which states that all of parent applications 09/480,812 and 08/945,264 are incorporated by reference, the attached pages 25-47 from the parent application can be added to the present specification without presenting any prohibited new matter. It is requested that the preliminary amendment of September 13, 2000, be made to the specification as it appears with the pages 24-47 submitted herewith, but which had been incorporated by reference as of the date that the application was filed.

So as to clarify matters, attached hereto is a substitute specification in which the preliminary amendment of September 13, 2000, has been entered into the 47-page specification, which includes the 24 pages as originally filed and pages 25-47 as submitted herewith. Applicant hereby states that the attached substitute specification contains no new matter beyond the subject matter that was presented on September 13, 2000, or incorporated by reference into the specification filed on September 13, 2000. It is respectfully

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requested that further prosecution be conducted using the attached substitute specification. No marked-up copy of the specification should be necessary as no additional changes are being requested other than those of the preliminary amendment of September 13, 2000, and the new complete pages of specification, previously incorporated by reference, which have been added hereby.

Also attached hereto is a substitute declaration that specifically refers to the amendment of September 13, 2000, as being part of the application. This corrects an informality in the previously filed declaration that failed to mention the preliminary amendment. Thus, it should now be very clear that the subject matter added by the preliminary amendment filed on September 13, 2000, concurrently with the application, is part of the continuation-in-part application as filed.

With respect to the claims, the examiner has renumbered originally submitted 1, 31 and 32 as claims 1-3. Applicants' amendment of April 25, 2002, adds new claims 4-9. Thus, claims 1-9 appeared in the case prior to the present amendment. By the present amendment all of claims 1-9 have now been deleted in favor of new claims 10-20, which are presented for initial examination in this case.

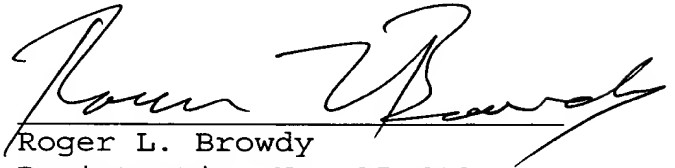
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Prompt examination on the merits and allowance are
earnestly solicited.

Respectfully submitted,

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